Supreme Court, U.S.
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In The

Supreme Court of the United States

CHEN-LI PANG, Petitioner, Pro se

v

ALLSTATE INSURANCE CO. Respondent,

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES APPEALS COURT FOR THE 2ND CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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49 pp

QUESTIONS PRESENTED

This case involves an amount of only a few hundred dollars and yet it carries a litigant history of more than 5 years. This peculiarity alone warrants closer scrutiny. Had it not been a case of wide ramifications, no one would go at such a length.

1. The case has gone through proceedings way departed from the accepted and usual norm of judicial practice, beyond judgment error or procedural ruling. Disciplinary measures are called for to ensure good administration of justice.

2. Panel of the Circuit Court and judges in courts thereunder attempted with inapt laws and cases to deceive and oppress a could-be legal illiterate. An assaut on public rights and the exploitation of the good faith of plain citizens constitute an inexcusible offences against the very judicial system these officers are supposed to up-hold. Corrective actions urged.

3. When jurisdictional ground is sound and firm, the Circuit Court contrary to its own and other appellate courts' previous rulings, sanctioned an attempt to preempt a jury trial by dismissing the case at conference stage, with inapt cases and folly requiste. Propriety is challeged. .

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AUTHORITIES CITED

Cases and Statutes and Rules

In accordance with Supreme Court Rules 12.7 the present list also includes cases cited in Joint Appendix, Brief, Brief for Defendant, Reply Brief before the Court of Appeals for the 2nd Circuit, even with those ineptly cited. Two-alphabet symbol after the case refers to the citer. such as:

SW for Local Judge Sam Walker,
Wk for District Judge Whithman Knapp,
VL for Defendant's Counsel,
WX for Judge Wexler et al., and
CP for petitioner himself

Cases in this petition are preceded with an asterisk and page numbers thereafter. Page numbers can be Arabic (1,2,3; Body), Roman lowercase (iv,v,vi; Preceding parts) or A7,A8,A9 in the case of Appendices. Pages in Joint Appendix are indicated in Parenthesis. Pages in Brief, Brief for Defendant, and Reply Brief, also in parenthesis are preceded by letter B(Brief), D (Brief for Defendant), and R(Reply Brief) and in that order. Those in other papers are specifically noted by their respective abbreviation or otherwise.

Naturally, all cases brought out by the defendant and previous triers are aimed at negating the jurisdiction as well as a punitive claim. Those cited by petitioner are for the support of his position. Arguments or explanations are placed below, where appropriate.

Cases

*ix. Action, S.A. v Marc Rich co. (951 F2d, 504) CP(18) Punitive damage are appropriate in cases involve wanton and willful fraud which need not be directed to the public.

*18, A2,A8. Ahmadi v Government Employee Ins. Co. (204 AD2d 374; 612 NYS2d 50)
SW(50),VL(94,D-8),WX(SO-2),CP(54,58.103; R 9-10)
First party home policy dispute. No analogy.

Allstate Ins. v Hilbun (692 Supp 698)
CP(44) Punitive damage includible in amount for jurisdiction.

Ashare v Mirkin,Barre etc. (435 NYS2d 438)
CP(16) Exemplary damage are to deter repetition.

Atherton v 21 E. 92nd Corp. (149 AD2d 354)
VL(26) CP(40) Tenant-landlord dispute, No Analogy.

*ix. Barrett v US Banknote Corp(806 F Supp 1094)
CP(19) Punitive damage viable where wrong aggravated by willfulness, even not directed against public.

* A7. Battala v State of NY (26 AD2d 203 1966)SW(47),CP(57) SW quoted this as a condition where punitive damage allowable. It must be pointed out there is a distinction between claims based on accident itself and that based on the fraudulent way of handling it.

Bishop v Allstate Ins. (313 F Supp 875)
CP(114) Punitive damage includible for jurisdiction.

Brink's Inc. v City of New York (546 F Supp 403)
CP(18) Defendant wealth a consideration.

Catalogue Service v North America Ins.
(47 AD2d 837) VL(93,96 D-7) CP(105, R-8)
Case denied because it did not constitute a breach of contract. However, even breach of contract is a private wrong. Punitive damage is not recoverable. No analogy.

Citty v State Farm Ins.(DCSC 1964 36 FRD 37)
CP(126,B-17,R-11) Investigation into defendant's file.

Chivers v New York Magazine (453 NYS2d 153; 114 Misc 995) CP(18) Defendant's wealth a consideration.

*A3. Cohen v Property Insurance Ass'n. (401 NYS2d 597; 65 AD2d 71) VL(93, D-7)CP(17,106; B-16, R-9,10,11.)
CP's citations on awardability and the dissimlarity with the instant case. Most important, no individual will in position to prove insurer has engaged unfair settlement as a general practice (Justice J. Lupiano's dissenting opinion).

Cosmopolitan mut. v Nassau Insurance Co.
(417 NYS2d 835; 99 Misc 1016)
CP(17) On awardability.

Couri v Westchester County Club (186 AD2d 712; 589 NYS 2d 941) VL(26),CP(58) Tenant-Landlord dispute.

*2. Cox v Livingston CA2, 1969, 407 F2d 392
(CP) Want of Jurisdictional Amount curable.

Davis v Williams (402 3d 92; Misc 1051)
CP(16,114) On awardability and its deterrent nature.

Doralee v Cities Services (569 F 2d 716) CP(1,5,20, 101,108) On jurisdiction and wealth a consideration.

111 East 86th St. Partners v Simon (434 NYS2d 886; Misc 2d 693) CP(18,115) On wealth a consideration

*3,14. Etheridge v Piper Aircraft (CA5 1977, 559 F2d 1027) CP. Improbability of recovery is not sufficient basis for denial jurisdiction.

Frizzy Hair stylist v Eagle Star Insurance
(329 NYS2d 554; 89 Misc 882) CP(17) On awardability.

*20. German Alliance Insurance v Kansas (1914,233 US 389) Insurance the public's greatest concern.

Granto v Allstate (70 AD2d 948)
VL(93), CP(105,R-8) An insured claimed compensatory and punitive award 10 months after benefit had been terminated. No likeness.

Guarantee Ins. v City of Long Beach
(482 NYS2d 522; 106 AD2d 428)
CP(16) On awardability.

Guccione v Hustler Magazine (880 F2d 298)
CP(18) Need no ratio to actual loss.

Hamilton v 3rd Ave. RR Company (53 NY 25)
VL(D-8) Source of Walker and Sheldon

Hartford indem. v Village of Hempstead
(422 NYS2d 47,48; NY2d 218)
CP(17) Need no ratio to actual loss.

Hill v Howes (132 F2d 569; 76 US App.DC 308)
CP(127,B-12,R-11) Rule 6(b) is absolute.

*A8. Holoness v Property Insurance Ass'n
(75 AD2d 569, 2d Dept 1980)
VL(25,93,D-7), SW(50)
CP(10,15) On awardability
CP(14,54,58,103,R-7) A fire insurance case where the litigant offered only repetitive labels and meaningless verbiage, in stead of stating the ultimate facts constituting the wrong. This petitioner did.

Krug v Pitass (162 NY 154)
VL 9,D-8) Source of Walker and Sheldon.

Liback v McDonald (New York Times 08/17/94; Not in West's Index) CP(1,5,108) On jurisdiction.
CP(20) On wealth a consideration.

*A7. Machacado v City of NY (80 Misc 2d 689)
SW(47),CP(57) Citizen v government case. no similarity.

Marvex Processing v Allendahl Ins.(91 Misc 683)
VL(25), CP(15,58) Dissimilarity emphasized.

*A7. Mastrodonato v Town of Chili
(39 AD2d 824, 4th Dept 1972) SW(48)
CP(57) Comment same as Battalla v State of NY.

Morrissey v Maritime Union (397 F Supp 659)
CP(13,18,114) Wealth a consideration.

MSR Assoc. v Consolidated Mutual Ins. (58 AD2d 858)
VL(56) CP(15,105,R-9) Dissimilarity emphasized.

O'Donnell v Kmart (474 NYS2d 344)
CP(18) Need no ratio to actual loss

*3.14. Ochoa v Interbrew America Inc (CA2 1998, 999 F2d 628) CP In considering challenge to jurisdictional amount, courts are only permitted to assess the allegation of the plaintiff's complaint and are to refrain from adjudicating the merit of the case.

Oppel v Empire Mutual Ins. (517 F2d 428)
CP(16) On awardability.

Philips v Republic Ins. (180 AD2d 845)
VL(93), CP(105, R-7) Contract dispute over home owner policy. No analogy.

*A8. Porter v Allstate (184 AD2d 685,2d Dept 1992) SW(50) CP(53,57,103) Same as Phillips' case above.

*ix. Ramapo Land v Consolidated Rail (918 F Supp 123) CP(19) Willful fraud to extreme degree are not required to be aimed at public to support punitive damage.

*A9. Richard v Allstate (1982 693 F2d 502)
CP(1,6,101,108;B-14,19) On awardability and the one who brings the wrong doer to account is performing a public service(B-14,19).

*18,A3,A5. Rocanova v Equitable Life (83 NY2d 603; 612 NYS2d 339) VL(25,D-7) WK(120) CP(58,B-15, R-8) A first party disability claim, No similarity.

Roy Export Co. etc v CBS Inc. (503 F2d 1137)
CP(17) Need no ratio to actual loss.

Royal Global Ins. v Chock full O'nuts
(86 AD2d 315) VL(93,D-7)
CP(105;R-8) A first party case. no semblance.

Saint Calle v Prudential Ins. (815 F Supp 679)
CP(17) On awardability

*2. St. Paul mercury v Red Cap Co.
(33 US 283) VL(D-5) CP(R-6) The only liability case quoted by the respondent comes to support the petitioner's position. The main theme is "events occurring subsequent to the institution of suit in federal court reducing amount recoverable below statutory do not oust jurisdiction." Justice Roberts remanded the case to the circuit court for further proceedings (USCA 41,71,80).

*2. Schild v Tymco (842 F Supp 225)
CP(115,R-6) Technical mistake on insufficient jurisdictional amount curable by amendment on ground of potential.

Stahli v Glynn (47 AD F2d 238;366 NYS2d 209)
VL(26,CP(58) Claim made on an erroneous info and the defendant acted lawfully.

State Farm Ins. v Schambelan (736 F Supp 926)
CP(44) On jurisdiction.

Toomey v Farley (2 NY2d 71) VL(D-8)

*A3,A5. Tongkook America Inc v Shipton Sportswear
(CA2 1994 14 F3d 781)
WK(120) VL(9,D-5,6) CP(R-5, R-7,PR-8)
Commercial disputes are different from fraud in that their controversy is in absolute value.

*A5. United Food & Workers Union v Centermark.(30 F3d 298-305) WK(120),CP(B,13, R-6) Distinction between a tort and a right claim lies in that the latter entails no amount in controversy and involves no fraudulent acts.

Universal Studio v Nintento Co. (1985 615 F Supp 838) CP(13) On awardability

Veeco Instrument v Candido (334 NYS2nd 321; 70 Misc 333) VL(25) CP(17) On awardability.

Walker v Sheldon (10 NY2d 401) VL(25, D-8) CP(58,R-9) A first party action. No similarity.

William R. Irvine v Allstate (436 F Supp 575) CP(114) On jurisdiction.

Statutes and Rules

7th Amendment of the U. S.Constitution
Right for trial by jury (PR. 10)

*1.A3.A4. 28 USC 1332. On diversity jurisdiction.

*3.13. David Siegel's commentary thereof. CP(R-6)

Note:

Three cases on the case list, Acton B.A.,(Defendant tried to vacate a default judgment by disclaiming citizenship) Barrett (collector sued the printer and auctioneer for misrepresentation) and Ramapo Land, (Property owner sued the RR for delay in repair a train-struked bridge) carry a notion that willful fraud to extreme degree are not required to be amid at public to support punitive damage. The notion is necessary as all are disputes between adversaries. We need not to invoke them for supporting a punitive claim as the third party, with its indefiniteness, is the public at large.

*7. Insurance Law 2601. Limitation on punitive damage applicable only to first party cases (54,103; B-15).

*12 28 USC 372 (c) on judicial conduct.

*12. FRCP Rule 5.(a), 28 USC 372(c) and Cannon 3(6) of Code of Ethics for Judicial Conduct: Communicate with court without serving petitioner (111-112,B-11).

*10.17. FRCP Rule 6(b) Time prescribed is absolute. Respondent made no timely submission throughout (78,99,B-12).

FRCP Rule 34. Discovery requests were all ignored, despite of 30-day requirement of this rule (78,99, B-8).

FRCP Rule 37(b)(2)(A). Evading discovery deemed facts established (115, B-19).

*10. FRCP Rule 38-39. When trial by jury demanded, all issues shall be tried by jury. Any deviation must have constitution or statutory basis (132, B-20).

*4.8. Local Chief Judge's Rule 28.12 (a), petitioner being denied of jury trial allowed hereunder (52).

Others

NY Jurisprudence 2nd, Sec. 1663. Failure of liability insurer to investigate circumstances held as bed faith (11).

*A10 Punitive Damages in Tort Law, Gerald W. Boston.Clark Boardman Callaghan, 28.5, FRAUD. P.6-7.

Petitioner, Chen-li PANG, Pro se respectfully requests that a writ of certiorari be issued to review the judgment of the United StateCourt of Appeals for the second circuit in this case.

OPINION BELOW

The opinion of the Court of Appeals of the Second Circuit was barred from Federal Report. The case has been dismissed 4 times in succession, including the denial of rehearing on June 23rd, 1999 by the same panel who made the Summery Order. The basis of dismissal seemed to have changed every time in the hands who tried to institute it. Detail in STATEMENT OF THE CASE.

STATEMENT OF JURISDICTION

The history of jurisdiction is incorporated in the STATEMENT OF THE CASE. The Federal Jurisdiction is based on 28 USC 1332, where action between citizens of different states, the claim amount has potential to pass a threshold currently in force.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The legal aspects of the case are noted in detail under the AUTHORITIES CITED. Without doing so, it is inadequate to show that the Court of Appeals and courts thereunder have "so far departed from the accepted and usual course of judicial proceedings,.... as to call for an exercise the Court's supervisor power", on which the certiworthy of the case partially hinges.

As for the Questions Presented per se,the right of trial by jury is upheld by the 7th Amendment of the Constitution and protected by FRCP Rule 39. The petitioner's inadvertent short claim does not oust jurisdiction. Because:

(1) The number was the same as the Manual he ac quired from the Court;

(2) it was set in as a threshold rather than an abso lute value;

(3) even a mistake can be cured by amendment on ground of big potential (Schild v Tymco 842 F Supp 225; Cox v Livingston CA2 407 F2d 392).

Since the District Court already assumed that petitioner had alleged $75,000 in punitive damage, nothing stands in the way of federal jurisdiction.

Cases invoked by opposing party and previous courts denying petitioner's rights are first party disputes. Among the tens cases quoted, the only liability case, St. Paul Mercury v Red Cap Co. 303 US 283 comes to sport petitioner's position. Justice Roberts ruled:

> "Events occurring subsequent to institute of suit in federal court reducing amount below statutory limit do not oust jurisdiction." (USCA 41.71,80)

To challenge a jurisdictional amount, court can only assess the allegations of the complaint and should not adjudicate the merit of the case. (Ochoa v Interbrew America Inc. CA2 1998, 999 F2d. 626) Any pre-judgment

is contrary to the spirit of the code (David D. Siegle's Commentary on 28 USC 1332).

The Summery Order not only pre-judged the outcome, but touched upon the merit of the case. To understand more of this wrong, the following citation could be immensely helpful.

> Improbability of recovery is not sufficient basis for denial jurisdiction.(Etheridge v Piper Aircraft. CA5 557 F2d 1927)

STATEMENT OF THE CASE

The case took place more than five years ago. On July 29,1994, petitioner's standing car was hit by defendant's insured as he backed up to a parking space. A report was made by a patrolman on spot and both parties were given a copy. The defendant's insured, with or without the conspire of insurer, concealed the on-site report and filed a post-event report with a police office to create a dispute. The illicit behavior of the insured might have been due to his fear of premium hike and/or losing insurability. But the subsequent acts of the insurer made its involvement in this initial wrong susceptible.

The insured wrongdoer later passed away. After a long journey to have a public administrator appointed, petitioner filed a civil suit at the City Court of Mount Vernon, New York on April 25, 1995. His repeated demands for a jury trial, allowable under the Chief Judge's Law 28.12(a) of the State was adamantly denied. After a preliminary conference and an unsuccessful arbitration, the case was dismissed on June 26, 1997 after a Trial de Novo

on February 19 of that year, on ground of Non-party and with citations of inapposite cases (Appendix C; J. 49-50[1]).

A diversity case was filed with the District Court of Southern New York under Title 28 #1332 on July 8th, 1997. The punitive claim raised, though still below the threshold in force, was not for meeting the jurisdictional requirement. Petitioner had, before the local court, cited 3 cases for the consideration of the trier, of which the lowest penalty was $200,000 (J.1).

After conferences on December 2nd, 1997 and April 17, 1998, together with some procedural flaws and inapt citations, a Memorandum and Order dismissed the case on April 20, 1998 (Appendix B; J. 118-121).

The ground for dismissal was:

> "inasmuch as the plaintiff has adduced no evidence that the action alleged to have been taken against him were taken against anyone else, we find there is no'reasonable probability' that his claim for punitive damage is a viable one."

To the Court of Appeals, notice was filed on May 13, and Brief submitted on 26, 1998. Reply Brief was made on September 16, 1998 after defendant's submission on September 10th. The judgment of the District Court was afirmed by a summert Order, filed on February 14.1999, (Appendix A) with an obscure notion of:

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[1] j.49-50 = Joint Appendix page 49-50. All sources are indicated by initials of the documents: J for Joint Appendix, B for brief, D for Brief for Defendant and R for Reply Brief, followed by page numbers.

> "Pang's conclusory allegation that "the fraudulent way defendant in [sic] hand- ling the present case is indicative of a general practice" is insufficient to show that the governing substantive law would permit him to recover punitive damages and survive Allstate's motion to dismiss."

The injurious misdemeanors and wanton behaviors of respondent and the unjust and biased acts of courts below petitioner has endured can be capsulized as follows.

From the Respondent

More than 10 accounts of Ex delicto leading to this litigation and thereafter.

(a) Ignored the first received on-site report and fabricated another one, upon which the contributory negligence blame is based. [fraud]

(b) Refused to investigate even called to. [willful omission]

(c) Refused to produce the picture taken by its own adjuster and denied of its existence twice in a court. To the end, speaking on the pledge of perjury, he admitted that a picture might have been taken, but put the location of it under a big if(J.75). [concealment and perjury]

(d) Told this petitioner that the offer was final, when the case was still pending at the Insurance Department. Dared to tell petitioner that his only alternative was to go to a small claim court.[tendentious overstep]

(e) Tendentiously delayed all answers. Of six occasions in

the entire proceedings, respondent made no single timely submissions. The submission of last post-trial memo before the local court reversed the judge's order.[tactic delay]

(f) Told petitioner his office preferred deposition after trial (J. 135). this fiasco demonstrated his usual way of dealing with the less enlightened public. [wanton befooling]

(g) When I step by step followed the rules, the malicious schemer, the proponent of deposition after trial, blamed me "causing the case a confusing history". [slander]

(h) Attempted to confuse and scare me off the litigation. In a letter to me on January 11, 1996, it said "we will request an opportunity to depose you and to have you examined by a physician of our choice." [threat]

(i) Having claimed non-party and won the concurrence of the local court, respondent, after receiving the summons for the diversity suit, schemed to create a false pendency of the case for the invoking of *Res Judicata* and turned the non-party to "a party of real interest" in his answer to complaint(J.34).[2] [fraudulent switch]

(j) With some tendentious motive, respondent repeatedly profaned the solemnity of the court system, labeling the regular civil action as small claim. The last one in their Brief, its 4th time (D. 3) was even made after petitioner reprehended in his Brief.

(K) Wrote to District judge asking "how to handle a proposed motion by plaintiff to amend his complaint", without serving petitioner in accordance with Rule 5(a) and

got a comfortable message. This was revealed by his second letter to the Court on March 11, 1998. [unlawful communication]

(l) After receiving the filed Brief and the Appendix on July 27, 1998, respondent, while not unaware of the fact that the suit was still on, sent a check of $1200 to plaintiff in an airy hope that an inadvertent deposit might draw the case to a close (R. 14).[scheming under flurry]

(m) Versed to make statement with no regard to facts and law. Despite of more than 10 accounts of fraud and wanton behavior, he still said none of those had happened (B. 9). The fact was even the Judge dismissing the case did not deny his wrong doing, but imposing an almost impossible burden on petitioner to find a companion to earn justice.

(n) Attempted to apply inapposite first party cases to this liability case. Of the 14 cases cited by him, all but one are first party disputes (J. 57-58,104-105). The insurance law 2601 quoted is also applicable only to first party cases (J. 103).

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[2] See page 9.

At Mount Vernon City Court
under Judge Sam Walker

Action first taken was against the estate of insured. The judge did not seem to be able to distinguish the differences between complaints base on accident itself and on the wanton behavior of the insurer, between honest delay or judgment error and fraud.

(a) The decision first rendered by the Judge invoking cases having no bearing to the case (J. 47-48).

(b) The arbitrator raised the indemnity slightly, but brushed away the punitive damage without giving reason.

(c) Adamantly denied petitioner's repeated request for a jury trial, depriving him the legal right conferred upon by Chief Judge's Rule 28.12 (a).

(d) What has been most absurd is the judge's final disposition of the case. At the Trial de Novo on February 19, 1996, the judge ordered the defendant to submit his memo before April 1st (40 days) and plaintiff to reply thereto within 14 days, He announced if the defendant failed to make timely submission, a judgment would come to plaintiff's favor. Having found that defendant did not send paper after that date, pititioner sent a Supplement Notes to affirm the case (J.14-21). But no words from the Court for a long time. The judge was not capable to make a ruling without the reference to defendant's paper. Defendant made a late submission on June 17, 1997, which enables the judge to go back on his own announcement and render a decision in accordance with the defendant's paper on

June 26, 1997.[2] The late submission not only ran afoul to the ruling, but to have the submission order reversed.

(e) During the interim, petitioner called the court for the reason of delay. The answer was "the judge is waiting for the research work of the defendant". When you compare the language used, the cases cited, this interesting statement could be hundred percent correct.

(f) More startling was the concurrence of the non-party claim in his Decision after Trail (J. 49-51). This claim was first popped up in respondent's last Affirmation in Opposition of June 17 (J. 22-26), the judge's awaited defendant's research work. The Decision said:

> "As aptly pointed out by the defendant in its Memorandum of Law, the insurer with whom the plaintiff has a dispute is not a party to this action. Therefore, no damage, punitive or otherwise, are recoverable against the insurer."

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[2]The Decision after Trial, concurring his incredible disavowal, was rendered on June 17, 1997. At the end of that decision, the words "settle judgment" were noted. There was really no room and need for the respondent to propose under CPLR. Attempting to invoke Res Judicata, respondent, scheming to create a false pendency, sent a draft judgment to the clerk and wrote in his answer of July 29, "a proposed judgment with notice of entry was filed on july 14, 1997 (three days after the receipt of the summons of this suit). No judgment has been rendered to date" and turned "non-party" to "the party of real interest" (J.34). His letter to the clerk (On petitioner's file) was not proposing but ordering for signature. From the format, the typeface, the paper of the document was not "adopted verbatim" but an order from defendant. Petitioner, a layman, is unable to appraise the normality of issuing court paper by litigant, but sees the type of frame-up and switching outrageous.

It should be interesting to ask if respondent could find a more meritorious defence, would he be using non-party as a way out.

(g) All other unjust rendering was detailed in petitioner's Notice of Objection and Assignment of Errors(J. 52-57) and A Review of Cases Cited by His Honorable Sam Walker and Defendant (J.57,60).

At the District Court
under Whitman Knapp, USJD

Petitioner had a sense of composure when he learned of the case was assigned to a known jurist. But the end result was disappointing.

(a) Petitioner has assigned six errors on the Memorandum and Order of the District Court, which dismissed the case.

1. The late submission of the defendant fell void under Rule 6 (b) of the FRCP.

2. A tort case is different from commercial disputes or right claims.

3. First party precedents inapplicable to this case.

4. A third party is the public.

5. Incomplete facts finding.

6. Dismissal lacks Constitutional or statutory basis as required by Rule 39.

(b) At the conference of April 17, 1998, his honor adjourned abruptly without letting petitioner complete statement.

(c) Noteworthy is the disparity on reasons for dismissal between the court and the defendant.

1. Defendant claimed the want of amount in controversy, the Court assumed petitioner had alleged $75,000 in punitive damage.

2. Defendant said that they had done nothing wrong, the court said another example must induced to satisfy the claim.

Interesting, yet irrational, is that the Court asked the defendant to present his case, when argument presented were not valid, the Court provided new ground to his rescue, but the ground provided would not even hold.

(d) Petitioner had not subjected a series of dilatory tactics from the defendant as mentioned in the Memorandum and Order (J. 119). Claim made on August 9, 1994, offer given on August 16. That was no delay. Defendant just made fraud of the case, he had not played delay tactic until the litigant began. In a law suit, we do not create one fact and hide another.

(e) Respondent wrote to the District Court, inquiring "how to handle a proposed motion by plaintiff to amend his complaint" (6k above) and got an answer saying "the motion will be kept in abeyance pending a determination of a present motion for dismissal." Petitioner did not get a copy on both communications in accordance with Rule

5(a) (J. 111-112; B. 11). It is not surprising for defendant to be unlawful, as he has used to. As for the court, it certainly is "a conduct that does not meet the standard expected of federal judicial officers."(28 USC. 372(c)). The code of Judicial Conduct Cannon 3 (6) reads "A judge should...neither initiate nor consider ex parte or other communication concerning a pending or impending proceeding.

On the Summery Order from the Court of Appeals for the Second Circuit

Not conversant with the operation of the court, petitioner could not visualize the decision making process. Base on a panel of three, the variables could be:

1. Opinion of honorable L.D. Wexler dominated, as he was sitting by designation. It was in fact made of a single justice.

2. Opinion was endorsed with unanimity.

3. Endorsed by one but dissented by the other. In this last case, petitioner tend to presume the dissenter could be her honorable Rosemary S. Pooler, as he can not image that a person having devoted years in consumer affairs and public interest would subscribe to such a paper.

For reason of this obscurity, we shall impersonalize our discussion here.

(a) The Summery Order affirmed a judgment by saying the District Court "correctly found that the amount in contro-

versy was less than $75,000." But the lower court had never seen this as a want of amount, it assumed $75,000 punitive damage had been alleged.

(b) The Summery Order twice referred the case as unfair settlement. This is no a question of fairness but a tort with many fraudulent accounts. The District Court imposing petitioner to find a partner to earn his justice is a firm recognition of the tortious nature of the behavior. When respondent used the Non-party to get out of this suit was an implicit admission of wrong doing. In tort case, relieves are conjecture pending the fact finding process, no one can prejudge how high or how low the recovery will be (David D. Siegel, Id).

(c) The precedents cited are all inapposite, but sufficient to reveal the jurisprudence level of the citer. Petitioner has repeated many times of this in his submissions. Cannon 3 of the Code of judicial Conduct call for the judge to perform the duty of his office impartially and diligently. Diligent is the easier part,just have to read the documents.

(d) When respondent sent a check of $1200 after he received the Brief and Appendix, it is a sign of his awareness of being wrong and anxiety over the possibility of being judged against. He did not know that he would be so well protected as to jeopardize the general interest of the entire society.

The Denial of Rehearing by the Same Panel.

The Petition for Rehearing was filed on April 22, 1999. It reached the clerk's office on April 26. No docket sheet was received until June 23rd (Postmarked 06/21/99).

Two days later, the Order of Denial came. What seems queer to this layman is why it took as long as 55 days to docket a paper and how could the denial came as soon as the it was registered. When rebuttal is made, naturally there be something unpleasing to the judgment maker, if review is to be made by the adjudicator, the denial could well be prescribed on the original order.

THE REASONS FOR GRANTING THIS PETITION FOR CERTIORARI

(a) Conflicts with Previous Rulings

The petition should be granted because the opinion below conflicts with previous rulings of many courts on the same question, including that from the same circuit. In considering challenges to jurisdictional amount, courts are only permitted to assess the allegation of the plaintiff's complaint and are to refrain from adjudicating the merits of the case. (Ochoa v Interbrew America, Inc. CA2 1998, 999 F2d 1027). Improbability of recovery is not sufficient basis for denying jurisdiction (Etheridge v Piper Aircraft Corp. CA5 1977, 595 F2d 1027).

(b) The Importance to the Public

The petition should be granted because it affects the interest of a large public.

1. **A Radiant Effect** Auto driving is an integral part of American life, not only concerning those in their drivers seats, but relating to anyone around them. Liability insurance, while protecting the insured from over exposure to legal obligations, a more important purpose is to assure

that persons wrongfully injured to have a resort for remuneration. It essentially is a public protection device.

Allstate, a leader in auto insurance, commending 12.2 per cent of market share, accounts for 4.15 million cases of handling each year out of the 34 million national total[3]. If we allow this kind of practice to continue, the number of affected, including the third parties involved, could exceed the population of the city of Detroit or the State of Indiana, not counting others in the trade to follow this evil. If strikes were on those places, all could see it a matter of "imperative public importance" as qualified under Rule 11 of the Court. How could, then, we tolerate this latent but equally for-reaching and even more harmful vile.

2. The Meaning of Public In this connection, petitioner wishes to expound a little on the words "aimed at public generally" as quoted by the panel below as a requisite for punitive claims. We have said time and again, liability insurance is a social devise for public protection. Liability detracted, insurer's social, or rather civil obligations fouls.(B. 15). Public as explained in the dictionaries means "open to all persons". Blacks Law Dictionary puts it "in one sense, every body, the body of people at large". In another context, it deduced "relating to, or affecting the whole body of people or the entire community". Thus, as long as we can not predict who the next one might be falling victimized, the practice is to be termed "aimed at the Public".

---

[3] Statistical Abstract of United States, 1996. P. 622, 628. Dept. of Commerce: Today, there are 34 million cases of car accident every year involving 110.5 billion in economic loses. (1994 statistics).

This correct interpretation can be found in other nomenclatures too. When we say Public Assistance, Public Defence, aid is not giving to a group but the needy individuals of the group. The third party is the public.

Unless digging into a section of the respondent's file, even the most sophisticated government apparatus could hardly verify for certain any particular behavior is a general practice. Most of the likelihoods are made through inference. Petitioner's duplicate experience in 15 year offers a logical conclusion.

(c) Departures from the Accepted and Usual Course of Proceedings

The petition of writ for certiorari should be granted because the courts below have so far departed from the accepted and the usual course of proceedings as to call for the exercise of the supreme Court's supervisory power.

Since many of the abnormalities were touched upon in the STATEMENT OF THE CASE, a list is made of the petitioner's unusual encounters throughout proceedings.

1. The Right of Trial by Jury

City Court denied petitioner's right trial by jury allowable under State Chief Judge's law 28.12(a). The District Court preempted a jury trial by dismissing the case at conference stage.

2. The Citing of Inapposite Cases

All three courts, the City, the District and the

Appeals quoted inapposite and inapplicable precedents.

3. The Connivance of Late Submissions

Both City Court and the District Court connived and recognized respondent's late submission without regard to Rule 6(b) of FRCP. Especially, at the local Court, a belated and order-reversed submission was recognized. Detail in STATEMENT OF CASE. under At Mount Vernon City Court under Judge Sam Walker. (d) Page 7-8.

4. The Obstruct of Discovery Process

Petitioner demanded subpoena Duces Tecum at the City Court for the picture taken by the adjuster of the respondent. The judge took the words from the respondent's counsel that the picture was not existent. At the District Court, petitioner moved for order of compel discovery after making a good faith effort asking for compliance. The motion was never attended by the Court.

5. Awaiting the Research Work of the Defendant

See Id (e) page 8.

6. Unlawful Communications and the Discriminative Practices

The story on unlawful communication is seen in under From the Respondent, (k) page 6 and under At the District Court under Judge Whitman Knapp, (e) page 8 as well as page 11 of the Brief. What we want bring out a contrast here is at the earlier stage of this diversity suit, petitioner wanted to file a list of exhibits and was declined

by the Pro se Clerk. So to the chamber he went to ask what he should or should not do. The answer was "Law clerk, like judges, are not allowed to advise the litigants how to proceed on their claims." (on file). Yet, he could not only direct his lawyer friend how to handle a case but reveal the court stand before trial. Is it not that court clerks are supposed to direct litigants on procedural matters?

7. No Joinder Between Court Order and Petitioner's Plea.

A. On citations

The case of Recanova v Equitable Life 83 NY2d, 603,612, 613; NYS2d 339 342; 1994 was first cited by the City Court Judge Sam Walker. It is a case of contract dispute over an home owner policy. Petitioner has in his A Review of Cases Cited by Judge Sam Walker and the Defendant (J.58) and Notice of Objection and Assignments of Errors (J. 54) exposed its inaptness. Yet, the same case was cited by both the Memorandum and Order and the Summery Order without negating the points petitioner had raised.

So as the Ahmidi v Government Employees' Ins. Co., 204 AD2d 347, 2d Dept 1994, a home owner policy dispute was repeated in the Summery Order of the Appeals Court.

The same goes with the case of Tongkook v Shipton 14 F3d 781. As petitioner made his objection known in the Brief, the case was still cited in the Summery Order without refutation.

B. On the Basis of Claim

The claim of this case was made on the fraudulent and deceitful scheme contrived by the respondent with criminal indifference to his civil obligations toward the public. Petitioner has enumerated several times in his submissions. including Supplementary notes before the Trial de Novo (City Court, J. 14) and the Complaint before the District Court (J. 4). Yet,the City Court Decision mentioned about "insurer's prolonged non-settlement of the case". The Memorandum and Order created a fact that "according to the Complaint, plaintiff was subjected a series of dilatory tactics on the part of defendant which he alleges were designed to dissuade, mislead and prevent him from obtaining full compensation for the damage to his car". No where in petitioner's paper has this notion.

The Summery Order from the Appeals Court, while labeling the case as an unfair settlement, noted that:

> a claimant seeking punitive damage must demonstrate that the insurer committed 'a fraud evincing high degree of moral turpitude and demonstrating such wanton dishonesty as to imply a criminal indifference to civil obligations.'

They paid no heed to the more than ten wanton dishonesty you had presented. The bear facts were no matter what you had said, they do not argue with you, they just ignore you.

Petitione wishes to ask who and in what stage are judgment on the case supposed to be made.

CONCLUSION

The case has a great effect upon society. If the opinion below is allowed to stand, you are encouraging and perpetuating the wrong doing of a trade of the greatest public concern (Justice Joseph Mckenna, German Alliance Insuance v Kansas 1914, 233 US 389; 1914) and exposing the entire community, insured as well as the injured third parties to a more vulnerable position as they are now in. I have known case, because of the insurer insists on using the contributory negligence pretext, she was forced to pay indemnity out of her own pocket. Injured parties often have to seek recourse from small claim courts for their due compensation and fail.

As to the Courts, my experience of gross miscarriage of justice can only be attributed to three possibilities; a bias toward big industry, the inadequate level of jurisprudence and the diminishing in legal reasoning capability. If the supervisor power which the Constitution bestows upon this high Court is not exercised, it certainly will undermine the public confidence in the judicial system of their country.

Accordingly, Petitioner respectfully requests that this petition for writ for certiorari be granted.

Respectfully submitted

Chen-li Pang
65 Buckingham Road
Tenafly, NJ 07670
(201)567-5319

APPENDICES

Appendix A. Summery Order from United States Court of Appeals for the Second Circuit

UNITED STATES COURT OF APPEALS SDNY
FOR THE SECOND CIRCUIT 97-cv-4971

This Summery Order will not be published in the Federal Reporter and may not be cited as precedential authority to this or any other court, but may be called the attention of this and other court in the subsequent stage of this case, in a related case, or in any case for the purposes of collateral estoppel or Res Judicata.

At a state term of the United States Court of Appeals for the Second Circuit, held at the United States Court House, Foley Square, in the City of New York on the 14th day of April, One thousand nine hundred and ninety-nine.

Present:
HONORABLE FRED I. PARKER
HONORABLE ROSEMARY S. POOLER Circuit Judges
HONORABLE LEONARD D. WEXLER* District Judge

CHEN-LI PANG Plaintiff-Appellant
v No. 98-7877
ALLSTATE INSURANCE CO. Defendant-Appellee

APPEARING FOR APPELLANT Chen-li Pang Pro se, Tenafly,NJ
APPEARING FOR APPELLEE Charles A. Collins
Voute,Lohrfink,Magro & Collins
White Plains, New York

Pang v Allstate Insurance Co.
No. 98-7877

Upon due consideration, IT IS HEREBY ORDERED, ADJUDGED AND DECREE that the judgment of the said district be and hereby is AFFIRMED.

Chen-li Pang pro se, appeals from an order dismissing his complaint for lack of subject matter jurisdiction. We affirm for substantially the same reason set forth by the District Court in its Memorandum and Order, dated February 20, 1998.

Pursuant to 28 U.S.C. #1332, a district court has diversity jurisdiction over an action between citizens of different states where the matter in controversy exceeds $75,000. See 28 U.S.C. #1332(a) (1996). Here, Pang was involved in a car accident with Allstate's insured, commenced the present action when Allstate refused to pay more than $1200 in property damages to Pang's car. Pang now seeks $1935.61 in compensatory damages and 75,000 in punitive damage, claiming that Allstate has engaged in unfair claim settlement practices.

Under New York law, there is no private cause of action for punitive damage where an insurance company has allegedly engaged in unfair claim settlement practices. See Ahmadi v Government Employee Ins. Co. 612 N.Y.S. 2d 50,51 (NYAD 1994). In stead, a claimant seeking punitive damage must demonstrate that the insurer committed "a fraud evincing a high degree of moral turpitude and demonstrating such wanton dishonesty as to imply a criminal indifference to civil obligations." which was

"aimed at the public generally." Recanova v Equitable Life Assurance Society 612 N.Y.S. 2d 339, 342 (N.Y. 1994) (citations and Internal quotations omitted.)

In the present action, pang's conclusory allegation that "the Fraudulent way defendant in [sic] handling the present claim is indicative of a general practice" is insufficient to show that the governing substantive law would permit him to recover punitive damage and survive Allstate's motion to dismiss. Because Pang cannot, based on the allegations in his complaint, make a good faith claim for punitive damage, the district court correctly found that the amount in controversy is less than $75,000 and that the court consequently lacked subject matter jurisdiction. See Tongkook America Inc. v Shipton Sportswear Co., (14 F 3d 781, CA2 1994) (if it appears to a legal certainty that the plaintiff cannot recover the amount claimed, the suit should be dismissed).

The judgment of the district court is AFFIRMED.

FOR THE COURT
s/Ralph Anderson
Carolyn clark Campbell, Clerk
RALPH ANDERSON
ACTING OPERATION MANAGER

(The seal on the covering page of the document reads:

UNITED STATES COURT OF APPEAL
SECOND CIRCUIT
FILED APRIL 14, 1999
CAROLYN CLARK CAMPBELL,CLERK)

Comment:

It is not true that New York precludes private cause of action against insurance company. Cases of awardability are in petitioner's supplementary note before the local court(J. 16-17). Ahmadi and Reconova are contract disputes. Tongkook is a commercial Claim. Justice Sullivan made rightly the distinction between 3rd and first party cases in Cohen case.

Appendix B. Order Denying Petition for Rehearing from the United States Court of Appeals for the Second Circuit

UNITED STATES COURT OF APPEALS
For the Second Circuit
United States Court House
40 Foley Square
New York, 10007

KAREN GREVE MILTON
ACTING CLERK

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the twenty third day of June, one thousand nine hundred ninety-nine.

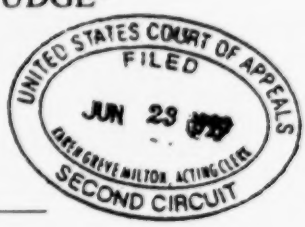
Present:

Honorable Fred I. Parker
Honorable Rosemary S. Pooler, CIRCUIT JUDGES
Honorable Leonard D. Wexler, DISTRICT JUDGE*

Pang, Plaintiff-Appellant,

v

Allstate Insurance, Defendanr-Appellee



A petition for panel rehearing having been filed herein by Chen-li Pang.

Upon consideration thereof, it is ordered that said petition be and it is hereby DENIED

FOR THE COURT
KAREN GREVE MILTON, Actin Clerk
By:s/_____
Beth J. Meador

*The honorable Leonard D. Wexler, of the United States District Court for the Eastern District of New York , sitting by designation.

Appendix C. Memorandum and Order from the District Court for Souther New York

UNITED STATES DISTRICT COURT
SOUTHER DISTRICT OF NEW YORK

CHEN_LI PANG, Plaintiff

Against MEMORANDUM & ORDER
97 Civ.4971

ALLSTATE INSURANCE COMPANY, Defendant

WHITMAN KNAPP, SENIOR DISTRICT JUDGE

Before us is defendant's motion to dismiss the complaint on the grounds that the amount in controversy is insufficient to satisfy the minimum requirement as set forth in 28 USC 1332(a). After carefully reviewing the complaint, we have determined that we lack the subject matter jurisdiction to hear this suit and therefore grant the motion to dismiss.

BACKGROUND

On July 29, 1994, plaintiff was involved in a car accident with another driver at the Hunts Point Market in the Bronx. Plaintiff filed a claim with defendant in the amount of $1600 [sic] in order to be reimbursed for the damage to his vehicle. The defendant, in accordance with its policy for cases where fault is in dispute, offered the plaintiff roughly fifty percent of his claim, or $815. The plaintiff rejected this offer of settlement.

What then followed is subject to some debate. According to the complaint, plaintiff was subjected to a series of dilatory tactics on the part of the defendant [sic],

which he alleges were designed to dissuade, mislead, and prevent him from obtaining full compensation for the damage done to his car. Ultimately, plaintiff filed a small claim action [sic] against the other driver in Mount Vernon city court. In that action he sought $1,935,61 in property damage and $7000 for mental anguish. After the mental anguish claim was dismissed, his property damage claim was sent to arbitration in June 1996. The arbitrator rendered a decision in plaintiff's favor, awarding him $1,200 in property damages.

He rejected this award and elected to proceed to trial in the Mount Vernon City Court. The court awarded him $1,200 in property damage, which he again refused to accept.

Plaintiff, acting Pro se, commenced this instant action July 8th, 1997, his first cause of action seeks property damages in the amount of $1,935.61. His second cause of action seeks punitive damages against Allstate in the amount of $50,000.[1]

DISCUSSION

A. Amount in Controversy requirement

28 USC 1332 provides that for diversity of citizen ship case, district courts shall have original jurisdiction of

[1] Upon learning that the amount in controversy requirement for cases in federal district court on diversity ground had been raise to $75,000. Plaintiff attempted to amend his complaint to request $75,000 in punitive damages. We need not reach plaintiff's pending motion to amend because our analysis will assume that he has alleged $75,000 in punitive damage.

all civil action where the matter of controversy exceeds the sum of value of $75,000, exclusive interest and cost. "[A] party invoking the jurisdiction of federal has the burden of proving it appears a ˜reasonable probability' that the claim is inexcess of the statutory jurisdictional amount." United Food and Worker's Union, Local 919, AFL-CIO v Centermark Properties Meriden Sq. Inc. (2nd Cir. 1994) 30 F 3d 298,304-05 (quoting Tongkook Am. Inc. v Shipton Sportswear Co. (2nd Cir. 1994) 14 F 3d 781,784). where the jurisdictional facts are challenged, the party asserting jurisdiction must support those facts with "competent proof" and justify its allegation by preponderance of evidence.Id.at 305.

Since plaintiff claims only $1,935.61 in property damage, his ability to meet the jurisdictional requirements hinges on his punitive damages claim. He must convince us that there is a reasonable probability that this claim exceeds $75,000.

B. Punitive damages

In New York, the Court of Appeals has held that punitive damages are not recoverable for an ordinary breach of contract as their purpose is not to remedy private wrong but to vindicate public rights. Rocanova v Equitable Life (1994) 83 N.Y. 2d, 603, 613, 613; N.Y.S. 2d 339, 342. Thus, private party seeking to recover punitive damage must not only demonstrate egregious tortious conduct on the part of the defendant, but that such conduct was part of similar conduct directed at the public generally. Id.

Furthermore, The standard for punitive damage in

insurance action is strict one "and this extraordinary remedy will be available on in limited number of circumstances. Id.

Inasmuch as the plaintiff has adduced no evidence that the action alleged to have taken by Allstate against him were taken against any one else, we find there is no "reasonable probability" that his claim for punitive damage is a viable one.

Defendant's motion for lack of subject matter jurisdiction is granted; the clerk is directed to dismiss the complaint.
SO ORDERED
April 20, 1998
New York, New York

s/ Whitman Knapp
WHITMAN KNAPP, SENIOR, U.S.J.D.

For Plaintiff

Chen-Li Pang, pro se
(Address omitted)
For Defendant

Stephen Riebling
Voute, Lohrfink, Magro & Collins
(Address omitted)

Comment:
Plaintiff assigned six errors on the memorandum & Order, together with some procedural flaws (Brief P. 12-20). On the other hand, plaintiff has supported his claim with "competent proof and justify its allegations by preponderance of evidence" as the maker of the Memorandum & Order has allegedly require.

Judgment for the Above

UNITED STATES DISTRICT COURT
SOUTHER DISTRICT OF NEW YORK

X

CHEN-LI PANG

Plaintiff

-Against-

97Civil 4971(WK)

JUDGMENT

ALLSTATE INSURANCE COMPANY

Defendant

X

Defendant having moved to dismiss the complaint and the said motion having come before the Honorable Whitman Knapp, United States District Judge, and the court thereafter, on April 20, 1998, having issued its memorandum & Order granting defendant's motion to dismiss the complaint. It is ORDERED, ADJUDGED AND DECREED: That for the reason stated in the Court's Memorandum & Order, dated April 20, 1998, the Complaint is hereby dismissed.

DATED: New York, New York
April 21, 1998

JAMES PARKISON
Clerk of the Court

s/ _____
signature illegible
Deputy Clerk

The document was entered
on the docket on 4/22/98

(A court stamp and initiated hand mark on upper right corner both show "April 21,98"; lower left marked "microfilm, April 21, 1998-9:00 A.M.)

Appendix D. Decision after Conference from the City Court of Mount Vernon

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BEFORE HONORABLE SAM D. WALKER
CITY JUDGE OF MOUNT VERNON

City Court of Mount Vernon
Mount Vernon: New York

----------x

CHEN-li PANG
Plaintiff

DECISION
-Against INDEX NO. 84291

THE ESTATE OF MICHAEL CAGGIANO ETC
Defendant

---------- x

The single question before the court is whether or not the plaintiff may maintain an action for mental anguish in an auto property damage case where no physical injury is alleged to have occurred.

Mr Pong [sic], the plaintiff herein seeks to recover damages of $1,935.61 for property damage to his automobile and $7,000 for mental anguish due to the insurer's prolonged non-settlement of the case and their ultimate settlement offer to him of 50% of his damage estimate. The plaintiff sustained no physical injuries during the accident.

It is possible for plaintiff to recover damages for mental anguish for fright resulting from a situation caused by the defendant even though no physical injuries occurred. (See Battalla v State of New York 26 AD2d 203

(1966) aff'd 24 NY2d 980; Machacado v City of New York, 80 Misc2d 889. However in the instant action, Mr. Pong's only allegation to support his mental anguish is that the defendant's insurance company failed to offer him the settlement he wanted in a timely manner. No recovery may be allowed for this sort claim.(See Mastrodonato v Town of Chili,39 AD2d 824 (4th Dept. 1972)) Court dismissed complaint where plaintiff sought to recover for "shock anguish and pain" cause by police officer's failure to adequately investigate car accident they were involved in].

The property damage portion of this action is referred to the Small Claims Part of this Court for resolution.

This decision constitute the order of this Court.

Dated: Mount Vernon, New York
April 24, 1996

s/ Sam D. WAlker

HON.SAM D. WALKER
CITY Court Judge

cc: CHEN LI PANG
Plaintiff Pro se
(Address omitted)

VOUTE, LOHRFINK, MAGRO & COLLINS
Attorney for Defendant George J. Lambert
Public Administrator for
Estate of Michael Caggiano
(Address omitted)

Appendix E. Decision after Trial from City Court of Mount Vernon

---

BEFORE HONORABLE SAM D. WALKER
CITY JUDGE OF MOUNT VERNON

City Court of Mount Vernon
Mount Vernon, New York

---x

CHEN-LI PANG, Plaintiff
Against DECISION AFTER TRIAL

THE ESTATE OF MICHAEL CAGGIANO #84291
as represented by County Public
Administrator George Lambert, Defendant

----------x

A Trial de Novo was held in the above matter on Feb. 19, 1997. following a previous arbitration proceeding. The plaintiff, Mr. Pang, seek to recover damages totaling $8935.61, representing 1935.61 for property damage to his automobile and $7000 for "mental anguish" due to the insurer's prolonged non-settlement of the case and their ultimate offer to him of 50% of his damage estimate. As previously decided by this Court for the reasons stated in its amended Decision dated April 24, 1996, no recovery may be allowed upon the claim for "mental anguish."*

Although not pleaded in the complaint, the plaintiff now also seek to assert a claim for punitive damage based upon the insurer's mishandling of his insurance claim. As aptly pointed out by the defendant in its memorandum of law, the insurer with whom the plaintiff has a dispute is

not a party to this action. Therefore, no damage, punitive or otherwise, are recoverable against the insurer, who is a non-party. In any event, "a punitive damage against an insurer in cognizable in New York only in circumstances where a plaintiff has made sufficient evidentiary allegations of ultimate facts of a fraudulent and deceitful scheme in dealing with general public as to imply a criminal indifference to civil obligations" (Porter v Allstate Ins. Co.,184 AD2d 685 (2d Dept, 1992) citing Holoness Realty Co. v New York Property Insurance Underwriting Assoc.,75 AD2d 569 (2d Dept 1980). Even if the insurer were a party to this action, the Court finds that punitive damage would not be warranted based upon the facts in this case (See Ahmadi v Government Employees Ins. Co., 204 AD2d 374 (2d Dept 1994))

Turning to the plaintiff's property damage claim, the Court finds on the credible evidence presented, which includes two damage estimate submitted by plaintiff, that the plaintiff is entitled to $1200.00 to compensate for the property damage to his vehicle.

This constitutes the Decision and Order of this Court.
Settle judgment.

Dated: June 26, 1997 s/ Sam D. Walker
Mount Vernon, New York

Hon. Sam D. WAlker
City Judge of Mount Vernon

Comment:

The non-party claim was indeed an innovation. The court only followed the long awaited research work of the defendant (Brief P. 6). Had the Court originally thought about this, it would not put ETC after the name of the defendant.

Appendix E. Important Passages from Petitioner's Own Submissions Throughout the Proceedings

Statement Before the Trial de Novo
(J. 12,13)

7. For an injured party seeking remedy from a small claim court, rightful reparation is possible only with otherwise productive time and procedural laboring. The insurance company will only have to pay what they were originally obliged to, even at loss. This in fact a punishment to the injured... Many scholars believe the process itself is a punishment. To crusade a case in a regular court is not an easy task. Professional counsel will definitely out spend possible gain. Do-it yourself entails a lot of research and trial and error.

10. The main issue here is an innocent party being blamed of contributing negligence in their fraudulent and deceitful practice to prevaricate a responsibility.

11. If justice in this case does not prevail, I see the general interest of a larger public seriously harmed or all courts be filled with cases as such, adding immeasurable judicial and financial burden to the cities and states.

12. If the case is rightly award, it would constitute a proper warning to the bad crops of the insurance community to have these unethical tendencies halted. I see a few decisions on a seemingly insignificant case as such in a right direction can benefit the country and the general public that much.

Supplementary Note to the Above
(J. 15-16)

5. A minor motor vehicle accident without personal injury is a simple case. The insurer after first received my accident report, wilfully produced another version to blame my contributory fault. Their refusal to produce adjuster's photo is another evidence of wanton behavior.

6. The respect and recognition of an on site report and photo evidence are the standard procedures and means to analyzing what had happened at the time of accident. When standard procedures are fouled, a wide range of public interests effected. Today there are 34 million cases of car accident every year involving 110.5 billion economic losses[3]. If such falsification and hiding of evidence be indulged, injustice falls upon millions of injured.

7. Not a judgment error, but a fraud and concealment, the present case would affect millions of average people.

Reply to Opposition
(J. 28-2)

What is at issue is to compensate the suffering induced by the gross and moral culpable conduct of the insurer for one. But more important is for the public protection. Just imaging, among thousands of restrained victims, how many would have the capability and willingness to go such a length for the public.

In the Richard v Allstate case 17 years ago, in which the physical claim was only twenty five hundred

[3] See the Statement of thr Case on page 15.

dollars, an award was made for $375,000. What was that for? It was for the public. In the judgment made by Chief Judge Clark and Circuit Judges Rubin and Williams (693 F 2d 502, 1982)... consideration was given to whether the plaintiff had performed public service by bring the wrong-doer to account. This plaintiff is just doing that.

Refutation to Defenses
(J. 45)

The present is not an "unfair claim handling case, but a grossly "fraudulent and deceitful scheme in dealing with the general public as to imply a criminal indifference to civil obligations." My experience is not solitary. Under the umbrella of that the only remedial channel available to the usual injured is the small claim court, the defendant and some others have deliberately used this tactic as a pattern in dealing with the public for their unjustified enrichment.

Opposition to Dismissal
(J.106)

Liability claim... has wide ramification upon the society. ... even more important is the distinction between genuine judgment error or honest delay and fraud and concealment. "The tort of fraud, which the present case is, comes closet to qualify for... punitive damage."[4]

---

[4] Punitive Damages in Tort Law, Gerald W. Boston.Clark Boardman Callaghan, 28.5, FRAUD. P.6; in the meantime, on page 7, it said, "Proof of fraud is sufficient in itself to justify the submission of the punitive damage issue to the jury.